

MOTION BY SUPERVISOR DON KNABE

April 24, 2012

A recent incident has demonstrated that we need to strengthen our verification process for participation in our Local Small Business Enterprise (LSBE) Preference Program. The incident involved a contractor’s complaint that a competitor’s principal place of business for one of our certified local small business contractors was actually in Orange County.

An investigation into the complaint was initiated by the Internal Services Department, and a project scheduled for Board approval had to be delayed while additional documentation from the contractor was reviewed. While there was no conclusive evidence to substantiate the allegation that this contractor was not headquartered in Los Angeles County, the primary issue that surfaced remains as to what constitutes a “principal place of business.”

The definition of the term "principal place of business" was recently addressed by the Supreme Court of the United States. In a decision issued in February of 2010 to determine the test for corporate citizenship in federal diversity cases, the Court held that a corporation's "principal place of business" referred to the single place where the corporation's officers directed and controlled the corporation's activities, i.e., its “nerve center,” and not simply a nominal headquarters consisting of nothing more than a mail drop box, a bare office with a computer, a conference room for board meetings, or the location of an annual executive retreat.

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In issuing this decision, the Supreme Court recognized the need to articulate a simpler, more definitive test to prevent a corporation from manipulating the determination of its "principal place of business" for strategic purposes. In order to minimize the possibility that any contractor will attempt to manipulate a small business certification, the County needs to develop a test to determine "principal place of business" and incorporate it into the County's LSBE Preference Program process.

**I, THEREFORE, MOVE** that the Board of Supervisors direct the Internal Services Department to work with County Counsel to review and revise the Local Small Business Enterprise Preference Program process to include the following:

- Establishment of a uniform interpretation of a "principal place of business" as place of business where the business or corporation's officers direct, control, administer, and coordinate all of the company's activities, i.e., the company's "nerve center," and not a nominal headquarters that is being used to justify participation in the County's program;
- Development of processes for validating the principal place of business criteria that will include documentation requirements to show that the company's principal place of business is in Los Angeles County;
- Implementation of the above principal place of business criteria in the program application process within one week for any new applications received; and
- Review of all current files for each certified Local Small Business Enterprise to ensure that there is sufficient information and documentation in each file to validate that each would meet those standards, and identify and investigate those which are in question, to include revocation of any certifications that do not meet those standards.

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